

not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.

* * * * *

(d)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals * * * whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

§ 779.406 "Student-learners".

(a) *Applicable regulations.* In accordance with section 14 of the Act regulations have been issued to provide for

employment under special certificates of student-learners at wages lower than the minimum wage applicable under section 6 of the Act. These regulations are set forth in part 520 of this chapter and govern the issuance of special certificates for student-learners in covered employments generally as well as such employments in retail or service establishments.

(b) *Definitions.* The regulations in § 520.2 of this chapter define "student-learners" and "bona fide vocational training program" as follows:

(1) A *student-learner* is defined as "a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program."

(2) A *bona fide vocational training program* is defined as "one authorized and approved by a State board of vocational education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college or university."

§ 779.407 Learners other than "student-learners".

Regulations have been issued in accordance with the authority in section 14 of the Act to provide for employment under special certificates of learners at wages lower than the minimum wage applicable under section 6 of the Act. Part 522 of this chapter contains the general regulations for learners and those for learners in particular industries. General learner regulations are set forth in §§ 522.1 to 522.11 of this chapter.

§ 779.408 "Full-time students".

The 1961 Amendments added to section 14 of the Act, the authority to issue special certificates for the employment of "full-time students," under certain specified conditions, at wages lower than the minimum wage

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applicable under section 6. The student, to qualify for a special certificate must attend school full time and his employment must be outside of his school hours and his employment must be in a retail or service establishment. In addition, the student's employment must not be of the type ordinarily given to a full-time employee. "The purpose of this provision," as made clear in the legislative history, "is to provide employment opportunities for students who desire to work part time outside of their school hours without the displacement of adult workers" (S. Rept. 145, 87th Cong., first session, p. 29). The application of this provision was amplified by the 1966 Amendments to provide for the employment of full-time students regardless of age but in compliance with applicable child labor laws in retail or service establishments and in agriculture (not to exceed 20 hours in any workweek) or on a part-time or a full-time basis during school vacations at a wage rate not less than 85 percent of the applicable minimum wage (H. Rept. 1366, 89th Cong., second session, pp. 34 and 35). Regulations authorizing the issuance of certificates under this provision of the Act are published in part 519 of this chapter.

§ 779.409 Handicapped workers.

Regulations have been issued under the authority in section 14 of the Act to provide for employment under special certificate of handicapped workers at wages lower than the minimum wage applicable under section 6 of the Act. These regulations are set forth in part 524 of this chapter. In these regulations handicapped workers are defined as individuals whose earning capacity is impaired by age or physical or mental deficiency or injury for the work they are to perform.

EMPLOYEES COMPENSATED PRINCIPALLY BY COMMISSIONS

§ 779.410 Statutory provision.

Section 7 of the Act provides, in subsection (i):

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular

rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than 1 month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

There are briefly set forth in §§ 779.411 to 779.421 some guiding principles for determining whether an employee's employment and compensation meet the conditions set forth in section 7(i).

§ 779.411 Employee of a "retail or service establishment".

In order for an employee to come within the exemption from the overtime pay requirement provided by section 7(i) for certain employees receiving commissions, the employee must be employed by a retail or service establishment. The term "retail or service establishment" is defined in section 13(a)(2) of the Act. The definition is set forth in § 779.24; its application is considered at length in subpart D of this part. As used in section 7(i), as in other provisions of the Act, the term "retail or service establishment" means an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

§ 779.412 Compensation requirements for overtime pay exemption under section 7(i).

An employee of a "retail or service establishment" who is paid on a commission basis or whose pay includes compensation representing commissions need not be paid the premium compensation prescribed by section 7(a) for overtime hours worked in a workweek, provided the following conditions are met:

- (a) The "regular rate" of pay of such employee must be more than one and one-half times the minimum hourly rate applicable to him under section 6, and
- (b) More than half his compensation for a "representative period" (not less